



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Senate Bill 302	Senate Substitute Amendment 1
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Senate Bill 302 relates to the regulatory treatment of broadband services by the Public Service Commission and local governments.

Senate Substitute Amendment 1 to Senate Bill 302 is summarized below.

Definition of “Broadband Service”

The substitute amendment defines “broadband service” as a telecommunications service that conveys voice, data, or other information in either direction between a provider’s facilities and a customer using any medium or technology, provided that the service operates either: (1) at a speed of at least 200 kilobits per second (kbps); or (2) by via an intentional radiator. “Intentional radiator” refers to an emerging wireless form of broadband communications, for example, communications based on the “wi-fi” standard, which does not meet the 200 kbps speed standard in some cases.

Under this definition:

- Broadband service is a telecommunications service.
- It includes all types of communications, including voice transmission, such as Voice over Internet Protocol (VoIP) service.
- It refers to conveyance in either direction, and so includes services with fast download speeds but slow upload speeds, or vice versa, as well as services with high speeds in both directions.
- It requires that the conveyance be to a customer, and so includes the “last mile” component of service.
- It includes both retail and wholesale services.

Exemption from PSC Regulation

Retail Service

The substitute amendment specifies that, with one exception, the offering or provision of broadband service at retail is not subject to PSC regulation under ch. 196, Stats.¹

In the one exception to the general exemption, the substitute amendment establishes that the PSC may regulate retail broadband service to the extent authorized or required in any order or regulation adopted by the Federal Communications Commission (FCC), under the Federal Communications Act (FCA) of 1934, as amended, if the FCC adopts the order or regulation after the effective date of this provision. The substitute amendment provides, however, that any exercise of this authority must comply with, but be no more stringent than, the FCC regulations.

Wholesale Service

The substitute amendment provides that a telecommunications utility shall provide interconnection, services, and unbundled network elements to other providers for retail broadband service to the extent specifically required or authorized by the FCC, under the FCA.

Exemption From Local Regulation

The substitute amendment also prohibits cities, villages, towns, and counties from enacting ordinances or adopting resolutions that regulate providing or offering to provide broadband service. The substitute amendment does not, however, prohibit a city, village, town, or county from regulating the use of a public right-of-way by a broadband service provider.

Other Provisions

The substitute amendment provides that broadband service:

- Is not a “basic local exchange service,” (i.e., traditional residential local phone service) a category of telecommunications services that is regulated by the PSC.
- Is not a “new telecommunications service,” and so a broadband provider is exempt from the requirement to file a tariff with the PSC, and the authority of the PSC to modify the tariff, for any new telecommunications service.

¹ It is the phrase “to an end user who is not a telecommunications provider” that makes this exemption from regulation apply only to retail service. Provision of service to a telecommunications provider would be for the purpose of that provider selling service to end users, and so would be a wholesale transaction. It is the absence of this phrase in the definition of “broadband service” that makes that definition apply to both retail and wholesale service.

- Is exempt from the requirement that price-regulated telecommunications utilities file tariffs with the PSC for any service they offer, including unregulated services. The substitute amendment also repeals the PSC's authority to apply price regulation to advanced telecommunications services.
- Is exempt from PSC approval and enforcement of interconnection agreements under s. 196.199 for any portion of or amendment to an interconnection agreement that provides from an incumbent telecommunications carrier to another provider interconnection, a service or a network element *exclusively* for use in providing retail broadband service. The PSC retains jurisdiction over interconnection agreements under s. 196.199 if the interconnection, service, or network element will be used to provide any other service in addition to broadband service. (Note: Section 196.199 is the principal statute that provides authority to the PSC to approve and enforce these federally required interconnection agreements. Broadband providers may submit interconnection agreements to the PSC voluntarily under s. 196.04, as many cellular providers do, but the PSC does not have authority to enforce interconnection agreements that it approves under that section.)
- Is subject to the prohibition on the subsidization of a nonregulated activity (in this case, broadband service) with revenues from a regulated activity (such as basic local exchange service).
- Is not a component of "universal service." In addition, revenues from broadband services are not subject to assessments for the Universal Service Fund.
- Is exempt from the PSC's consumer protection requirements, but is subject to the jurisdiction and rules of the Department of Agriculture, Trade and Consumer Protection, including requirements relating specifically to telecommunications services.
- Is subject to state anti-trust law to the same extent that other unregulated telecommunications services are subject to that law.

Legislative History

On March 2, 2004, Senator Kanavas introduced Senate Substitute Amendment 1. On March 3, 2004, the Senate Committee on Transportation and Information Infrastructure recommended adoption of Senate Substitute Amendment 1 and concurrence in Senate Bill 302, as amended, on separate votes of Ayes, 3; Noes, 2.

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